

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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Attorneys for Defendant

MALIBU MEDIA, LLC,

Plaintiff,

v.

ANDREW DIMATTEO,

Defendant.

Civil Action No. 3:13-cv-04658-FLW-LHG

CIVIL ACTION

AMENDED ANSWER,
SEPARATE DEFENSES
and
DEMAND FOR JURY TRIAL

Defendant, ANDREW DIMATTEO, residing at 295 West Boulevard, Hopewell, New Jersey,
by way of Answer to plaintiff's Amended Complaint, says:

INTRODUCTION

1. No factual allegations are alleged against this defendant in paragraph 1 of the Complaint which consists solely of legal conclusions. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant is without sufficient information to form a belief as to the allegations contained in paragraph 1 of the Complaint and leaves plaintiff to its proofs.

PARTIES, JURISDICTION & VENUE

2. Defendant Denies the allegations contained in paragraph 2 of the Amended Complaint.

3. Defendant is without sufficient information to form a belief as to the allegations contained in paragraph 3 of the Amended Complaint and leaves plaintiff to its proofs.

Jurisdiction and Venue

4. No factual allegations are alleged against this defendant in paragraph 4 of the Amended Complaint which consists solely of legal conclusions. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant is without sufficient information to form a belief as to said allegations and leaves plaintiff to its proofs.

5. Defendant Denies the allegations contained in paragraph 5 of the Amended Complaint.

6. No factual allegations are alleged against this defendant in paragraph 6 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Admits that he resides in this District, but is without sufficient information to form a belief as to the remaining allegations contained in this paragraph and leaves plaintiff to its proofs.

Parties

7. Defendant is without sufficient information to form a belief as to the allegations contained in paragraph 7 of the Amended Complaint and leaves plaintiff to its proofs.

8. Defendant Admits the allegations contained in paragraph 8 of the Amended Complaint.

Factual Background

9. No factual allegations are alleged against this defendant in paragraph 9 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

10. No factual allegations are alleged against this defendant in paragraph 10 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

11. No factual allegations are alleged against this defendant in paragraph 11 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

12. No factual allegations are alleged against this defendant in paragraph 12 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

13. No factual allegations are alleged against this defendant in paragraph 13 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

14. No factual allegations are alleged against this defendant in paragraph 14 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

15. No factual allegations are alleged against this defendant in paragraph 15 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

16. Defendant Denies the allegations contained in paragraph 16 of the Amended Complaint.

17. Defendant Denies the allegations contained in paragraph 17 of the Amended Complaint.

18. No factual allegations are alleged against this defendant in paragraph 18 of the Amended Complaint. As such, this defendant is not obligated to Admit or Deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against this defendant, defendant Denies such allegations.

19. Defendant Denies the allegations contained in paragraph 19 of the Amended Complaint to the extent that such allegations relate to or implicate any actions of defendant. Defendant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 19 of the Amended Complaint and leaves plaintiff to its proofs.

20. Defendant Denies the allegations contained in paragraph 20 of the Amended Complaint to the extent that such allegations relate to or implicate any actions of defendant. Defendant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 20 of the Amended Complaint and leaves plaintiff to its proofs.

21. Defendant Denies the allegations contained in paragraph 21 of the Amended Complaint to the extent that such allegations relate to or implicate any actions of defendant. Defendant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 21 of the Amended Complaint and leaves plaintiff to its proofs.

22. Defendant Denies the allegations contained in paragraph 22 of the Amended Complaint to the extent that such allegations relate to or implicate any actions of defendant. Defendant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 22 of the Amended Complaint and leaves plaintiff to its proofs.

Miscellaneous

23. Defendant is without sufficient information to form a belief as to the allegations contained in paragraph 23 of the Amended Complaint and leaves plaintiff to its proofs.

24. Defendant is without sufficient information to form a belief as to the allegations contained in paragraph 24 of the Amended Complaint and leaves plaintiff to its proofs.

Count I

26. Defendant is without sufficient information to form a belief as to the allegations contained in paragraph 26 of the Amended Complaint and leaves plaintiff to its proofs.

27. Defendant Denies the allegations contained in paragraph 27 of the Amended Complaint.

28. Defendant Denies the allegations contained in paragraph 28 of the Amended Complaint to the extent that such allegations relate to or implicate any actions of defendant. Defendant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 28 of the Amended Complaint and leaves plaintiff to its proofs.

29. Defendant Denies the allegations contained in paragraph 29 of the Amended Complaint.

WHEREFORE, plaintiff's Amended Complaint against defendant should be dismissed in its entirety with prejudice.

SEPARATE DEFENSES

1. Defendant owed no duty to plaintiff.
2. Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the applicable statute of limitations has expired on plaintiff's works.

3. Any damage suffered by plaintiff was due to conduct of third parties or the co-defendants over whom this defendant had no control, which conduct intervened and superseded any conduct or negligence of this defendant.

4. Plaintiff's claim is barred by the doctrine of laches.

5. Plaintiff's claim is barred by the doctrine of unclean hands.

6. Plaintiff's claim is barred by the doctrine of estoppel.

7. Any damages suffered by plaintiff as a result of circumstances pled in plaintiff's complaint were the direct result of plaintiff's failure to take reasonable action to prevent damages, and by such failure, plaintiff failed to mitigate any damages.

8. Plaintiff has failed to join a party without whom the action cannot proceed and this defendant reserves the right to move to dismiss due to plaintiff's failure to join an indispensable party.

9. Plaintiff is not licensed to do business within the State of New Jersey and is barred from filing suit herein.

10. The contents of plaintiff's works are in the public domain.

11. The copyrights to plaintiff's works were not properly registered.

12. Any copying or use of any of plaintiff's works by defendant was de minimis.

13. Any copying or use of any of plaintiff's works by defendant was fair use.

14. Plaintiff has forfeited its rights in the works alleged in the Complaint.

15. Plaintiff has misused its rights of the works alleged in the Complaint.

16. Plaintiff has abandoned the copyrights of the works alleged in the Complaint.

LESLIE A. FARBER, LLC
Attorneys for Defendant

By: /s/ Leslie A. Farber
Leslie A. Farber

Dated February 4, 2014

JURY DEMAND

Defendant hereby demand a trial by jury on all issues so triable herein.

LESLIE A. FARBER, LLC
Attorneys for Defendant

Dated February 4, 2014 By: /s Leslie A. Farber
Leslie A. Farber

CERTIFICATION OF SERVICE

I hereby certify that on February 4, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and that service upon all parties who have appeared in the matter and upon all counsel of record has been perfected.

Dated February 4, 2014 /s Leslie A. Farber
Leslie A. Farber